

INITIAL STATEMENT OF REASONS

TITLE 15. CRIME PREVENTION AND CORRECTIONS DIVISION 2. BOARD OF PRISON TERMS CHAPTER 3. PAROLE RELEASE ARTICLE 3. PRISONER RIGHTS

Amendment to section 2253
Voluntary Waivers, Stipulations of Unsuitability, Postponements and Continuances

SPECIFIC PURPOSE AND NECESSITY OF EACH REGULATORY CHANGE.

The specific purpose of each amendment of the proposed text and the rationale supporting the Board of Parole Hearings (Board) determination that each amendment is reasonably necessary to carry out the purpose for which the amendment is proposed is as follows:

Proposed amended section 2253(a). General.

This section identifies those prisoners that are serving life sentences with the possibility of parole as the group affected by the regulation. Any prisoner serving a life sentence and appearing before the Board for a parole consideration hearing may have that hearing delayed through a process of voluntary waiver, a stipulation to unsuitability, a postponement or a continuance, subject to certain parameters.

Proposed amended section 2253(b). Voluntary Waivers.

This section provides a mechanism for a life prisoner to request to voluntarily waive his or her parole consideration hearing for any reason. If a voluntary waiver is granted, the life prisoner's next hearing will be scheduled at one, two, three, four or five years from the date the scheduled hearing was to take place.

A request for a voluntary waiver must be submitted to the Board for consideration no later than forty-five (45) calendar days prior to the date of the scheduled hearing. A request submitted no later than forty-five (45) calendar days shall be presumed to be valid. A request submitted less than forty-five (45) calendar days prior to the scheduled hearing shall be presumed to be invalid and denied by the Board absent a showing of good cause.

If a request for a voluntary waiver is granted during the week of the scheduled parole consideration hearing, the Board shall give the District Attorney and/or the victim or victim's next of kin or designated representative the opportunity to give a statement on

the record. The record shall be made available for consideration by the next hearing panel. The life prisoner may waive his or her right to be present for such statements.

Life prisoners may waive no more than three consecutive parole consideration hearings.

Proposed amended section 2253(c). Stipulations of Unsuitability.

This section permits a life prisoner to offer to stipulate to unsuitability of parole at any time prior to their scheduled parole consideration hearing. An offer to stipulate to unsuitability must be submitted in writing and shall set forth the reasons that support unsuitability. In considering the offer to stipulate to unsuitability the Board shall review any written statements received from the District Attorney and/or the victim or victim's next of kin or designated representative. The Board retains the discretion to accept or reject the offer to stipulate. If an offer to stipulate to unsuitability is granted, the life prisoner's next hearing will be scheduled at one, two, three, four or five years from the date the scheduled hearing was to take place.

If an offer to stipulate to unsuitability is granted during the week of the scheduled parole consideration hearing, the Board shall give the District Attorney and/or the victim or victim's next of kin or designated representative the opportunity to give a statement on the record. The record shall be made available for consideration by the next hearing panel. The life prisoner may waive his or her right to be present for such statements.

Proposed amended section 2253(d). Postponements.

This section details circumstances where it may be appropriate to postpone a parole consideration hearing. Under the proposed regulation, a parole consideration may be postponed to due to the absence or untimeliness of required Department or Board documents and/or board notices, documents, reports or prisoner accommodations, or where there are exigent circumstances such as illnesses of the attending parties, natural disasters, and institutional emergencies.

A life prisoner may request a postponement to resolve others matters relevant to his or her parole consideration. In these cases, the board may only grant a postponement upon an affirmative of showing of good cause by the prisoner and only if the prisoner did not and could not have known about the need for the postponement earlier that when he or she made the postponement request. For purposes of this subsection, good cause is defined as a prisoner's excused inability to obtain essential documents or other material evidence or information, despite his or her diligent efforts.

If a postponement is granted the week of the scheduled parole consideration hearing, the Board shall give the District Attorney and/or the victim or victim's next of kin or designated representative the opportunity to give a statement on the record. The record shall be made available for consideration by the next hearing panel. The life prisoner may waive his or her right to be present for such statements. If statements are taken, a transcript shall be made and a copy provided to the life prisoner.

Proposed amended section 2253(e). Continuances.

This section details circumstances when a parole consideration hearing can be continued. After the commencement of a parole consideration hearing, the Hearing Panel Chair may continue a hearing only upon a showing of good cause. In considering a continuance, the Hearing Panel Chair shall weigh the reasons and the need for the continuance and any inconvenience to the board, Department, or appearing parties and determine what will be in the best interest of justice. If the parole consideration hearing is continued the board shall attempt to impanel the same panel members when the hearing is reconvened.

If a continuance occurs, the Board shall give the District Attorney and/or the victim or victim's next of kin or designated representative the opportunity to give a statement on the record. The record shall be made available for consideration by the next hearing panel.

TECHNICAL, THEORETICAL, AND EMPIRICAL STUDY, REPORTS OR DOCUMENTS

The Board did not rely on any technical, theoretical, or empirical studies in consideration of this proposed regulation.

CONSIDERATION OF REASONABLE ALTERNATIVES

The Board has not identified any alternatives to the proposed regulatory change that would fully meet the objectives of the statute.

EFFECT ON SMALL BUSINESS

The subject of this regulatory action directly affects prisoners serving life sentences. The Board has not identified any alternatives that would lessen any adverse impact on small businesses. However, no impact on small business is expected.